California Rice Commission
California Farm Bureau Federation
East San Joaquin Water Quality Coalition
Sacramento Valley Water Quality Coalition

California Regional Water Quality Control Board
Central Valley Region
ATTN: Adam Laputz
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Re: Scope and Goals for the Long-term Irrigated Lands Regulatory Program

Dear Mr. Laputz:

In response to the Long-term Irrigated Lands Regulatory Program Questionnaire, the California Rice Commission, California Farm Bureau Federation, East San Joaquin Water Quality Coalition and Sacramento Valley Water Quality Coalition (collectively referred to hereafter as "Coalitions") submit the following responses to the questions asked.

1. *Are there specific issues that should be considered in changing the irrigated lands definition to include only operations where water is applied to produce crops (e.g., greenhouse operations and managed wetlands would no longer be included)?*

At this time, managed wetlands should remain in the Irrigated Lands Regulatory Program (ILRP). However, the Coalitions understand that wetland managers would like to have further discussions with staff from the Central Valley Regional Water Quality Control Board (Regional Board) to discuss the possible alternatives for exclusion from the ILRP.

2. *What issues should be considered in expanding the irrigated lands regulatory program to include regulation of waste discharged to groundwater in addition to surface water?*

First and foremost, the ILRP is a surface water program and should remain a surface water program. The Coalitions do not believe that it is appropriate or justified to expand the ILRP to include groundwater. At the very least, before expanding the ILRP to include discharges to groundwater, the Regional Board must review and synthesize available studies to determine if and where there is a groundwater quality problem resulting from irrigated agriculture. There currently exist several outstanding, established programs from which such a determination could be made prior to expanding the current ILRP program to address groundwater. For example, there is the Ground-Water Ambient Monitoring and Assessment (GAMA) Program being conducted by the State Water Resources Control Board (State Water Board) in coordination with the U.S. Geological Survey and Lawrence Livermore National Laboratory; and, the Ground Water Protection Program being conducted by the Department of Pesticide Regulation, which determines where and how pesticides are contaminating groundwater, identifies areas sensitive to pesticide contamination and develops mitigation measures to prevent that movement. Additionally, a host of other state, federal and local agencies have implemented, or are

implementing, groundwater monitoring programs. These agencies include the Department of Water Resources, Department of Public Health, Department of Toxic and Substance Control, the U.S. Environmental Protection Agency (EPA), Bureau of Reclamation, and several individual counties.

Furthermore, until such time that the Regional Board can identify where groundwater is impacted by irrigated agriculture and the entities that may be responsible for the impact, the Regional Board does not have the authority to impose groundwater monitoring requirements on agriculture. The Regional Board may require monitoring on any "person who has discharged, discharges, or is suspected of having discharged or discharging, or proposes to discharge…. In requiring those reports, the regional board … shall identify the evidence that supports requiring that person to provide the reports." (Wat. Code §13267(b)(1).) In other words, to require monitoring the Regional Board needs to have some evidence that the person or persons in question may be discharging, or is suspected of discharging, waste to groundwater. The percolation of agricultural irrigation water to groundwater is not a "discharge of waste" and therefore the Regional Board will need more evidence than just the fact that crops are being irrigated to justify groundwater monitoring requirements. (See Cal. Code Regs., tit. 23, § 783, "[n]o permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to the groundwater of water resulting from the irrigation of crops."; See also Report of the Assembly Committee on Water concerning AB 413 at p. 3, "[t]he discharge of waste does not take place while water is still being used to irrigate crops in the fields.") Thus, the Regional Board should not plan or anticipate using the ILRP to require exploratory groundwater monitoring on irrigated agriculture in the Central Valley. Moreover, the statewide comprehensive groundwater quality monitoring program, GAMA, has an estimated cost of $50 million for every 10-year cycle. Irrigated agriculture cannot be expected to pay this expense for a fishing expedition in addition to what is already being spent for surface water monitoring.

To the extent that the Regional Board finds it necessary to continue exploring the inclusion of groundwater in the ILRP, the Regional Board must consider the following questions for each individual groundwater basin before developing a regulatory program intended to address impacts to groundwater caused by irrigated agriculture:

- What constitutes a "discharge of waste" to groundwater from irrigated agricultural activities?
- Who or where are the irrigators discharging waste to groundwater?
- Does the "waste" enter the groundwater, or does it move laterally to surface water and therefore is covered by the ILRP for surface water discharges?
- Where are all the aquifers and fissures?
- How will potential non-agricultural dischargers of wastes to groundwater be assessed their fair-share of program costs where the groundwater basin is impacted by others besides irrigated agriculture?

4. *What types of management practices or potential mitigation measures should be considered when evaluating how to protect ground and surface waters?*

The Regional Board should not evaluate management practices or potential mitigation measures in the manner suggested by the question. In general, management practice information for irrigated agricultural activities is available from the Natural Resources Conservation Service, the Coalition for Urban/Rural Environmental Stewardship (CURES) and from various commodity organizations. Management practices vary and are implemented differently by individual irrigated agricultural operations. It is not appropriate for the Regional Board to use management practices as a form of mitigation in this context because identified practices may not apply universally throughout the valley. At most, the ILRP should continue to rely on the development of water quality management plans where there is an exceedance of an applicable water quality objective or criteria that is causing impairment to beneficial uses. Through the development of water quality management plans, the Coalitions provide information to growers and works with them to implement appropriate management practices for the pollutant of concern.

Alternative Approaches for Achieving Program Goals

5. *What type of categories, if any, should be considered for grouping agricultural operations for similar regulatory requirements (e.g., geography, climate, commodity, soil type, operations, threat to water quality)?*

The Regional Board should not design a long-term irrigated lands regulatory program that is categorized by geography, climate or any other factor listed above, but instead allow agriculture the flexibility to develop their own programs for complying with regulatory requirements. For example, on January 25, 2008 the Regional Board adopted Monitoring and Reporting Program (MRP) guidelines for Coalitions to follow for compliance with the existing ILRP. The guidelines were developed by the Regional Board staff, Coalition groups, laboratories, consultants and several universities after working together for over two years. In general, the guidelines allow each individual Coalition or group to develop their own monitoring strategies for each area and move away from a "one size fits all" monitoring program. Within the guidelines, the Coalitions are able to design a program that takes into account geography, climate, commodity, soil type, farming operations, and the threat to water quality. Stringent requirements by the Regional Board that remove this flexibility in its development of a long-term ILRP would cost the program efficiency and simplicity.

6. *Are there specific regulatory tools (e.g. waivers of waste discharge requirements, waste discharge requirements) that should (or should not) be used and why?*

The Coalitions operate effectively and efficiently under the current regulatory structure and therefore other tools are not necessary at this time unless specifically requested by an individual Coalition.

Factors that will be Considered in Developing and Evaluating Program Alternatives

7. What potential negative environmental impacts may occur due to further efforts to protect ground or surface water quality?

Further efforts to protect ground and/or surface water may result in the over regulation of agriculture in the Central Valley, which could result in the loss of irrigated farmland. The loss of irrigated farmland may cause negative environmental impacts by decreasing habitat, reducing groundwater recharge and by reducing flows in surface waters. All of these impacts must be assessed under the California Environmental Quality Act. Moreover, the loss of irrigated farmland may result in the increase of urbanization, which may increase the state's emission of carbon and therefore cause a negative environmental impact as it relates to climate change. Impacts to climate changes caused by a loss of farmland must also be assessed in relationship to adoption of a long-term ILRP.

8. Are there any specific costs/economic concerns that should be addressed during development of the long-term irrigated lands regulatory program?

The Regional Board is required by law to consider all costs associated with an agricultural water quality control program. (See Wat. Code §13141.) The consideration of such costs should include not just actual costs for compliance but economic impacts associated with such a program as it impacts agriculture and the California economy. The cost estimate should also factor in the thousands of volunteer hours that will be required of growers to administer such program.

Currently, the California Rice Commission, East San Joaquin Water Quality Coalition, and the Sacramento Valley Water Quality Coalition estimate that it will cost over $3.1 in 2008 to operate the existing ILRP in the Sacramento and East San Joaquin Valleys. This estimate does not include local subwatershed costs in the Sacramento Valley, which are estimated to be an additional $200,000. In turn, growers are assessed a per irrigated acre fee that ranges from approximately $.85 per acre to potentially $10.00 per acre to fund these efforts. These costs are directly assessed against growers and growers are unable to recoup such regulatory costs by raising commodity prices. Most of agriculture is subject to a world market that establishes prices for commodities. Individual growers do not have the ability to pass on regulatory costs to consumers.

9. What should be considered to ensure that the long-term irrigated lands regulatory program is implemented in a manner that is cost effective for the State and agricultural community?

First and foremost, the program needs to be consistent and allow for the prioritization of resources. For the past several years, the program has been revised or subject to some sort of change on an almost annual basis. Each time that the program requirements change, the Coalitions must spend significant time and resources re-educating its members and revamping

program elements. To avoid wasting resources in this manner, we encourage the Regional Board to adopt a program that is flexible enough to allow for program adaptations that are necessary but consistent in its process and approach over time for regulating agricultural discharges. Second, the program needs to allow the Coalitions sufficient authority to prioritize its resources to address pollutants of concern in a successive manner versus requiring Coalitions to develop management plans for all pollutants of concern at once. Through such an approach, the Coalitions would be able to address the highest priority pollutants more effectively because they would not need to spread valuable resources across many pollutants, some of which may not be as large of a concern for water quality.

In addition, the program needs improvements in the area of data collection. Currently, Coalitions are required to conduct repetitive and redundant monitoring in certain situations. For example, when there is an exceedance for toxicity, the Coalitions are required to continue monitoring for toxicity even if no agricultural source can be identified. This redundant cycle of monitoring simply results in redundant columns of data that provide no useful information to the Coalitions or the Regional Board. Instead, Coalitions should be able to redirect funds to BMP implementation rather than continuous monitoring.

10. What factors should be considered to ensure that the long-term irrigated lands regulatory program is fair?

As stated previously in our answer to question number 5, the Coalitions encourage the Regional Board to develop a long-term program that recognizes the guidelines adopted into the MRP. Because Central Valley agriculture is diverse, the long-term program needs to provide the Coalitions with sufficient flexibility to address the local conditions. The development of a one-size fits all type of program would not be fair and should be avoided.

Additionally, the Regional Board should focus enforcement efforts on those growers or landowners failing to seek coverage under either the Coalition group waiver or the individual waiver where required to do so by law versus looking to bring enforcement actions against existing Coalition members covered by the Coalition conditional waiver or individual growers subject to individual waivers.

11. What can be done to ensure that the long-term irrigated lands regulatory program is effective at protecting water quality?

To truly be effective, the Regional Board must first evaluate the efficacy and veracity of existing Water Quality Control Plans (Basin Plans) and their implementation keeping in mind that the law requires the state to regulate "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Wat. Code § 13000.) The Regional Board currently interprets the Basin Plans in the Central Valley to find municipal and downstream beneficial uses applicable to almost every stream, creek, and drainage within the Basin Plan. Through such interpretations, the Regional Board is looking to impose a regulatory

program that protects water quality to a level that is not necessary for the protection of actual and existing beneficial uses. This over-regulation undermines the integrity of the program and requires Coalitions to spend limited and valuable resources on efforts to protect water quality that are not necessary. To effectively protect water quality in a reasonable manner, as required by state law, we encourage the Regional Board to allow the Coalitions to focus resources on real and actual problems that harm existing beneficial uses.

As mentioned immediately above, the Coalitions also encourage the Regional Board to continue its enforcement efforts to reduce non-compliance and dropouts. For example, there are thousands of acres of State owned land that is not signed up for coverage in the ILRP although it is legally subject to the terms of the ILRP. To effectively protect water quality, the Regional Board must ensure that the State owned lands are enrolled in a Coalition(s), or subject to the terms of an individual waiver or permit.

Finally, the Regional Board must have better communication among the various units within the Regional Board, as well as the Department of Pesticide Regulation, Department of Food and Agriculture and other sister agencies.

12. Are there any additional factors that should be considered in developing and evaluating irrigated lands regulatory program alternatives?

The Coalition are burdened with monitoring for legacy pesticides, some of which have a very long half-life. Monitoring for legacy pesticides is expensive and provides little help in improving water quality as these pesticides are no longer in use. Funds would be better spent on reducing erosion or implementing other BMPs versus continuing to monitor for such pesticides.

Participation/Information

13. How would you like to be kept informed of the development of the long-term irrigated lands regulatory program?

The Coalitions would like to be kept informed through e-mail, public notices and regular meetings with staff. The Coalition would also like to invite Regional Board staff to attend Coalition quarterly meetings to further discuss topics of concern to individual Coalitions and their members.

14. How would you like to participate in the development of the long-term irrigated lands regulatory program?

The signatories to this letter have long participated in negotiations and discussions with Regional Board staff and others with regard to the development and implementation of the existing ILRP. Because of our key involvement, we expect the Regional Board to involve us frequently in meetings and dialogue regarding the development of the long-term irrigated lands program.

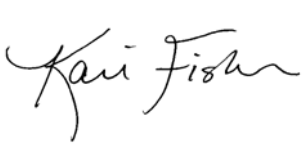
Should the Regional Board decide to develop some sort of advisory group for the development of this program, each signatory to this letter should be included as a member of the group.

15. Is there any information that was not provided that you would like to have about the long-term irrigated lands regulatory program?

The Coalitions understand that the Regional Board may be considering the inclusion of non-irrigated pasture and dry land farming in the long-term program. The Coalitions do not support the inclusion of such landscapes at this time because there is a clear lack of evidence that non-irrigated pasture and dry land farming are contributing to water quality impairments. Until there is adequate evidence to the contrary, non-irrigated pasture and dry land farming should not be included.

The Coalitions also encourage the Regional Board to develop an unequivocal definition of a "discharger" that is brief, concise and can be understood without seeking legal advice from an attorney. Such a definition might include the term "potential to discharge" or some other statement that results in full participation in the program of all farmers with irrigated agriculture. Refining this definition will be especially important if some aspect of groundwater is brought into the program.

Sincerely,



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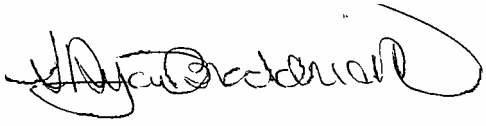

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cc. Joe Karkoski, Central Valley Regional Water Quality Control Board